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IN THE

Supreme Court of the United States

October Term, 1964
No. 884

In the Matter of

MIGUEL VEGA ANDRADA,

Petitioner.

Petition for a Writ of Certiorari to the Supreme Court of California.

PHIL SILVER,
1680 North Vine Street,
Hollywood, Calif. 90028,
Attorney for Petitioner.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

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MIGUEL VEGA ANDRADA,

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Petition for a Writ of Certiorari to the Supreme Court of California.

To the Honorable Earl Warren, Chief Justice and Associate Justices of the Supreme Court of the United States:

I.
Opinion Below.

Petitioner Miguel Vega Audrada prays that a writ of ceritorari issue to review an order of the Supreme Court of California entered without an opinion in the case of In the Matter of the Application of Miguel Vega Andrada for a writ of habeas corpus, case number 8332, Supreme Court of California.

II.
Jurisdiction.

A petition for a writ of habeas corpus filed by the Petitioner originally in the Supreme Court of California was denied on Nov. 10, 1964. This petition is being filed within 90 days thereafter.

The jurisdiction of the Supreme Court of the United States to review this case on petition for certiorari is invoked under 28 U.S.C.A. 1253(3).

Questions for Review.

1. Does sterilization as punishment in a misdemeanor or failure to provide case constitute a violation of the Eighth Amendment of the United States Constitution?

2. If a Defendant pleads guilty to a charge of failure to provide — a misdemeanor — and applies for probation does the coercion of a threatened jail sentence by the municipal court, unless the Defendant agrees to submit to sterilization constitute a violation of procedural due process of law under the Fourteenth Amendment?

Statement of the Case.

On October 3, 1963, a complaint was filed against the petitioner in the Municipal Court of Pasadena Judicial District by one, Aurora Andrade, accusing the petitioner of having committed a misdemeanor, to wit: Section 270 of the Penal Code of the State of California, it being alleged that the petitioner had wilfully and unlawfully and without lawful excuse omitted to furnish necessary food, clothing, shelter, medical attendance, and other remedial care for his minor children, Albert — aged 17, Trinidad — aged 15, Rita — aged 13, and Jose — aged 5.

The petitioner thereafter was duly arraigned and the case set for trial.

On December 2nd, 1963, the petitioner entered a plea of "Guilty" and made an application for probation. On January 6, 1964, the case was called for hearing for

probation and sentence before the Honorable Joseph A. Sprankle, Jr., Judge Presiding. Thereupon, the following proceedings took place.

Judge Sprankle invited counsel for the defendant and the defendant to confer with him privately in his chambers. Such a conference was then held. Neither the court clerk nor any court reporter were present. The only persons then present were Judge Sprankle, the defendant, and defendant's counsel, one Fernando Solis.

Judge Sprankle stated to the petitioner and to petitioner's then counsel, the following:

> "I am concerned about all the children this man is producing without the ability to support them. I would be more inclined to look favorably to the defendant for probation if the defendant would, No. 1 — marry this woman with whom he has had a child, and secondly, submit to an operation which would keep him from procreating. I am not compelling him to submit to sterilization, but *if he does not agree to it, his chances of probation will be considerably lessened.*"

Mr. Solis, in the presence of Judge Sprankle, then stated to petitioner,

> "The judge wishes you to marry Elma [Martello], that the judge wants you to have an operation not to have any more children, that the next time you come back to court, you should have a certificate of marriage and a letter from your doctor to the effect that you have had an operation [sterilization].
>
> "That you are either to bring in the certificate of marriage and a letter from the doctor, or you will go to jail."

That petitioner then stated to Mr. Solis, in the presence of Judge Sprankle, that he did not want this operation. That Judge Sprankle replied — "If you don't bring those two papers, I will put you in jail."

Thereupon, the parties re-entered the courtroom and Judge Sprankle announced from the bench that the case was being continued to February 6, 1964, for sentence.

That after petitioner left the courtroom with his attorney, he stated to his attorney — "Must I submit to sterilization? — I love this woman very much and I would like to have more children with her." That his attorney replied to him — that if he did not agree to sterilization, as suggested by Judge Sprankle, he would probably be sentenced to jail.

That petitioner asked his attorney (Mr. Solis) if there was any way of avoiding this operation. That his attorney replied that Judge Sprankle had been quite clear as to the consequences if he did not submit to this operation; that unless petitioner brought a medical certificate to court and a marriage license, he could look forward to some time in jail.

Thereafter, petitioner discussed this matter with his personal physician, Dr. Rudolfo Chacon, who referred him to one Dr. Henry R. Alpert. On January 16, 1964, your petitioner submitted to a vasectomy performed by Dr. Henry R. Alpert.

Subsequently thereto, petitioner was again re-examined by Dr. Alpert who then informed petitioner that he could no longer have any children.

On January 24, 1964, the petitioner entered into a marriage ceremony with Elma Martello in the County of Los Angeles.

On February 6, 1964, the following proceedings took place in court before the Honorable Judge Joseph A. Sprankle, Jr. Petitioner's attorney stated to Judge Sprankle in open court — "I have the documents your honor has requested in this matter." and he thereupon handed the marriage certificate of the petitioner and Elma Martello and the certificate from Dr. Henry Alpert, to the bailiff, who in turn handed the two documents to Judge Sprankle for his inspection. Judge Sprankle then announced the following sentence: That petitioner be sentenced to one year in the County Jail, roadcamp recommended; that the sentence be suspended and defendant placed on probation for a period of three years, on the following terms and conditions: (1) support his minor children to the best of his ability, but not less than $65.00 per month through the court trustee; the court trustee to advise the court within five days if defendant fails to make the payments; (2) remain a law-abiding citizen; (3) no reporting to or supervision necessary by the probation department.

Thereafter, and to this date, your petitioner has made each and all payments required to be made by him, pursuant to the conditions of the probation sentence.

On November 10, 1964 a petition for a writ of habeas corpus was denied by the California Supreme Court.

Reasons for Granting the Writ of Certiorari.

The action of the Municipal Court, an inferior court of limited jurisdiction in the State of California, compelling the Petitioner to submit to sterilization under the coercive alternative of a jail term and the denial of his application for probation "involves one of the basic civil rights of man." *Skinner v. Oklahoma,* 316 U.S.

535. The case touches a sensitive and important area of human rights (*id.*). The refusal of the California Supreme Court to grant the writ of habeas corpus sought for by petitioner has not only condoned the "cruel and unusual punishment" inflicted in this case, but it has similarly established that this punishment may continue to be carried out in open defiance of the 8th and Fourteenth Amendments of the United States Constitution.

The Statutory Authority in California to Impose Sterilization.

The sole statutory authority in California to impose sterilization by the courts (limited to the *Superior* Court is (1) Carnal abuse upon a child under ten (10)—Penal Code §645; and (2) Sex degenerates who have been committed to a state prison at least twice for rape and three times for other major crimes. (Penal Code 2670). (The District Court of Appeal determined that a syphilitic defendant who had been convicted of statutory rape, a felony, could be required to submit to a vasectomy. *People v. Blankenship,* 16 Cal. App. 2d 606, 61 Pac. 53 [1936].)

In 1939, §6624 of the Welfare and Institutions Code which authorized vasectomy operations on inmates confined to institutions was implicitly held to be constitutional, despite the lack of notice requirements. *Garcia v. State Department,* 36 Cal. App. 2d 195.

These are the only two reported decisions in California involving vasectomies.

There is neither statutory, nor legal precedent in California for the imposition of sterilization in a misdemeanor failure to provide case.

Thus, California, without statutory authority or legal precedent has become the first and only state in the United States which presumably places fathers unable to support their children in the same category with rapists of young children and state-confined sex degenerates.

Cruel and Unusual Punishment May Not Be Invoked by a Judicially Imposed Sentence.

It is not within the purvue of a court's powers, *i.e.*, a Municipal Court in a misdemeanor case, to coerce a defendant to submit to sterilization as a precondition for the court to look favorably upon his application for probation. The California Penal Code provides that conditi. ns of probation must be reasonable. 1203. Penal Code.

In California a Defendant is entitled to have an application for probation determined on its merits the court being required to exercise a "legal discretion". The denial if a fair hearing on an application for probation deprives a defendant of a "substantial right". *People v. Means,* 117 Cal. App. 2d 29, 245 P. 2d 585 (1953); *People v. Neal,* 108 Cal. App. 2d 491, 495, 239 P. 2d 138; *People v. Jones,* 87 Cal. App. 482, 498 (1927); *People v. Raner,* 86 Cal. App. 2d 107, 194 P. 3d 37; *People v. Hollis,* 176 Cal. App. 2d 92, 98, 1 Cal. Rptr. 293 (1959).

In *Springer v. United States* (C.C.A. 9th — 1945), 148 F. 2d 411, the circuit court of appeals held void a condition of probation that a defendant give a pint of blood at a Red Cross blood bank.

Probation is intended to be an amelioration of the punishment described by law, for the offense. The United States Supreme Court has said that while probation is a matter of grace, the probationer is entitled

to fair treatment and is not to be made victim of whim or caprice. *Billings v. United States,* 287 U.S. 216, 223 (1932). For a discussion of the *Billings* case, see 3 Wayne L. Rev. 125, 131, 132 (1957).

When the question was presented to the United States Supreme Court, Justice Jackson, in a concurring opinion, said,

> "There are limits to the extent to which a legislatively represented majority may conduct biological experiments at the expense of the dignity and personality and natural powers of a minority. Even those who have been guilty of what the majority define as crimes. But this act falls down before reaching this problem, which I mention only to avoid the implication that such a question may not exist, because not discussed. On it, I would reserve judgment." (*Skinner v. Oklahoma,* 316 U.S. 527, 546.)

The Eighth Amendment Prohibits the Infliction of Cruel and Unusual Punishment.

The Eighth Amendment to the federal Constitution and Art. I, Sec. 6 of the California Constitution both prohibit cruel and unusual punishment.

A penalty is cruel when it shocks the moral sense and outrages those innate principles of humanity which have been broadened and expanded by civilized enlightenment. *In re Finley,* 1 Cal. App. 198, 81 Pac. 104; *United States v. Rosenberg,* 195 F. 2d 583.

While it is generally for the legislature to define crimes and fix punishment that may be inflicted, courts may denounce the punishment as unusual if it is "out of all proportion to the offense, and is beyond question an

extraordinary penalty for a crime of ordinary gravity committed under ordinary circumstances." *Finley, In re, supra.*

The Due Process clause of the Fourteenth Amendment prohibits a state from executing sentence in a cruel manner. *Louisiana, ex rel. Francis v. Resweber,* 329 U.S. 459, 91 L. Ed. 422, 67 S. Ct. 374.

The infliction of cruel or inhuman punishment upon a prisoner is a violation if his due process rights under the Fourteenth Amendment. (*In re Riddle* (1962), 57 Cal. 2d 848, 851, 22 Cal. Rptr. 472, 372 P. 2d 304 footnote 1. *United States v. Jackson,* 235 F. 2d 925 (1956).)

The authoritative pronouncement finally came in *Robinson v. California* (1962), 370 U.S. 660, 82 S. Ct. 1417, 8 L. Ed. 2d 758; 76 Harv. L. Rev. 143. The Eighth Amendment similarly prohibits the state from the infliction of "cruel and unusual punishments." See *Weems v. United States* (1909), 217 U.S. 349, 30 S. Ct. 544, 54 L. Ed. 793; *Trop v. Dulles* (1958), 356 U.S. 86, 78 S. Ct. 590, 2 L. Ed. 630.

In *Trop v. Dulles* (*supra*) the Supreme Court determined that the punishment of statelessness is too uncivilized to meet the test of the Eighth Amendment. (See also 72 Harv. L Rev. 168.)

In *Robinson v. California* (1962), 370 U.S. 660, 82 S. Ct. 1417, 8 L. Ed. 2d 758, the United States Supreme Court held the California narcotic addiction statute unconstitutional and that even the mild punishment of a 90-day jail sentence was therefore cruel and unusual.

In Iowa, a three-judge Federal Court held a statute to be void which required the performance of a vasectomy

on a criminal twice convicted of a felony. *Davis v. Berry,* D.C. Iowa, 1914, 216 Fed. 413, 419.

In 1918, a District Court Judge in Nevada upheld the claim that the imposition of a vasectomy violated the Nevada Constitution which prohibited cruel and unusual punishment. *Mickle v. Henricks,* 262 Fed. 687 (1918).

The court acknowledged that the operation could be performed in such a manner as to be painless. The court said, "There is no attempt by defendants to support the judgment on the ground that vasectomy is calculated to promote general welfare."

The court emphasized that mutilation of the person had never been a recognized mode of punishment in Nevada, and that the Nevada Constitution forbidding punishments either "cruel or unusual," was to forbid newly devised as well as cruel punishments.

The Nevada court then concluded:

> "Vasectomy in itself is not cruel; it is no more cruel than branding, the amputation of a finger, the slitting of a tongue, or the cutting off of an ear; but when resorted to as punishment, it is ignominious and degrading, and in that sense is cruel.
>
> "Reformation of the criminal is a wise and humane purpose of punishment, to be disregarded only when the death penalty is inflicted. It needs no argument to establish the proposition that degrading and humiliating punishment is not conducive to the resumption of upright and self-respecting life. When the penalty is paid, when the offender is free to resume his place in society, he should not be handicapped by the consciousness that

> he bears on his person, and will carry to his grave a mutilation which, as punishment, is a brand of infamy."

In *Buck v. Bell,* 272 U.S. 200, 71 L. Ed. 1000, the statute provided for an intelligent and scientific inquiry to determine whether or not the defendant could transmit to offspring a mental deficiency imposing unnecessary burdens upon society.

That case is regarded as a land-mark decision in the struggle for compulsory human sterilization of the *mentally disordered* in the United States.

The United States Supreme Court held that a Virginia law which authorized the sterilization of mental defectives under careful safeguards did not violate the due process clause of the Fourteenth Amendment. Justice Holmes delivered the opinion of the court. In upholding the Virginia sterilization statute, he said, "It is better for all the world, if instead of waiting to execute degenerate off-spring for a crime, or let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind . . . Three generations of imbeciles are enough."

The United States Supreme Court decision in *Buck v. Bell* did not imply the right of the state to destroy the constitutionally protected right of an indigent father to the guarantee of life, liberty and the pursuit of happiness.

The present failure to provide case in California did not involve a convicted sex degenerate, nor a mental defective.

In *Smith v. Board of Examiners,* 85 N.J.L. 46, 88 Atl. 963 (N.J.) a statute was considered which provided

for sterilization of epileptics confined in charitable institutions. It was voided by the New Jersey Court because it was held to be repugnant to the 14th Amendment to the Federal Constitution.

In *Osborn v. Thompson,* 103 Misc. 23, 169 N.Y. Supp. 638, a New York court held unconstitutional a sterilization statute because of a denial of equal protection of the law, and because not within the proper exercise of police power.

The case was later affirmed in 171 N.Y. Supp. 1094.

In *Brewer v. Volk,* 167 S.E. 638, 204 N.C. 186, S. Ct. 1933 the North Carolina Supreme Court said in holding a sterilization statute unconstitutional, "The present act makes no provision for notice and hearing, and therefore impinges the due process clause of the Constitution."

In *Skinner v. State ex rel. Williamson* (1941), Supreme Court, Okla., 115 P. 2d 123, the State Supreme Court, in a five to four decision upheld the habitual criminal sterilization act. This act provided that any person adjudged to be such an habitual criminal, *i.e.,* the conviction of two or more crimes to final judgment amounting to felonies involving moral turpitude, shall be rendered sexually sterile. The State Supreme Court acknowledged that where the operation of a vasectomy is required or authorized in a purely penal statute as a punishment for crime, it has been held to constitute cruel and inhuman punishment, the Court citing cases.

The Supreme Court also noted that the constitutional objections being urged are not applicable where the operation of vasectomy is required as a eugenic measure and not as punishment.

The four dissenting judges in concluding that the act deprives persons of constitutional rights without due process of law and offends against state and federal constitutions declared, "The right to beget children is one of the highest natural and inherent rights, protected by Section 7, Article 2 of the Constitution of the State, and the 14th Amendment to the Constitution of the United States relating to due process." And the Court added, "The hearing provided by the Act does not provide for inquiry into any possible criminal traits of the person informed against and requires no finding as to whether or not such traits are transmittable to his posterity, nor whether by accident, disease, age, infirmity, or for any other reasons such person is reasonably capable of producing offspring either criminal, degenerate, or imbecile, against which the legislature may legitimately seek to protect society." (Reversed 316 U.S. 527; to same effect *Smith v. Wayne,* 204 N.W. 140 (1925); *In re Main,* 19 P. 2d 153 (1933).)

In *Smith v. Command,* 231 Mich. 409, 204 N.W. 140 (1925) the court stated that the provision in the statute which authorized sterilization of the feeble minded class who were unable to support any children they might have, and whose children probably would become public charges by reason thereof was unconstitutional class legislation based on financial ability.

Conclusion.

At stake lies the issue as to whether Municipal Courts in the State of California may without statutory authority and solely as a measure of punishment continue to subtly coerce Defendants in failure to provide cases to submit to sterilization as the price for obtaining procedural due process of law. Sterilization as punishment for an indigent father's inability to support his children and as the price to pay to obtain fair play from a court of justice can at best be termed not only an arbitrary and unreasonable deprivation of a person's liberty but at the worst, perhaps the saddest commentary on the ineptitude of our times.

Genetics of the Human Race; Genetics in the Twentieth Century, pp. 393-394 (1951);

Cook, "Eugenics or Euthenics, 37 Ill. L. Rev., pp. 291, 298 (1943).

Respectfully submitted,

PHIL SILVER,

Attorney for Petitioner.